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**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS
801 West Badger Road
Madison, WI 53702**

CORRESPONDENCE MEMORANDUM

DATE: April 13, 2003

TO: Employee Trust Funds Board

FROM: Shelly Schueller

SUBJECT: Secretary's Equity Authority Report

The Department's Equity Authority, § 40.03(2)(w), Wis. Stats., was created by 2001 Wisconsin Act 16 and was effective August 31, 2001. Section 40.03(2)(w), Wis. Stats. states:

If the secretary determines that an otherwise eligible participant has unintentionally forfeited or otherwise involuntarily ceased to be eligible for any benefit provided under this chapter principally because of an error in administration by the department, [the Secretary] may order the correction of the error to prevent inequity. A decision under this paragraph is not subject to review. The secretary shall submit a quarterly report to the employee trust funds board on decisions made under this paragraph.

The intention of this statute is to permit the Department Secretary to correct and prevent inequities that result from errors made by Department staff of the type described in the statutes. The Department has developed guidelines to assist staff in determining when to recommend use of the Department's equity authority.

This is the second time in 2003 that the Secretary has exercised this authority. In 2002, the Secretary used his equity authority twice. In accordance with state statute, this informational report is included with your regular board meeting materials whenever the Secretary has exercised his equity authority.

ETF Equity Authority #2003-02

BACKGROUND ON ABANDONED ACCOUNTS

Once a participant's Wisconsin Retirement System (WRS) account is considered abandoned under § 40.08 (8), Wis. Stats., when the participant reaches age 70, his or her name is included on the abandoned accounts list, which is published once a year in the official state newspaper. The Department also maintains a list of abandoned accounts on the ETF Web site. Under § 40.08 (8) (d), Wis. Stats., the participant then has ten full calendar years to apply for the WRS benefit. After the ten-year deadline, the participant has irretrievably forfeited the account.

FACTS

- January 20, 1989. The participant's name was published in the official state newspaper on the abandoned accounts list. At the time the participant's name was included on the abandoned accounts list, the Department interpreted § 40.08 (8) (d), Wis. Stats., to mean that the deadline for the Department to receive a benefit application was the last working day of the tenth year after the year in which the abandoned account participant's name was published. Because the participant's name was published on January 20, 1989, the participant's benefit application deadline was interpreted to be December 30, 1999. When the Department developed a Web site in September 1997, this application deadline date was posted along with the participant's name on the abandoned accounts list.
- November 1999. Upon the advice of ETF legal counsel, the abandoned account deadline interpretation was changed. Under the new interpretation, the abandoned account benefit application deadline is *exactly* ten full calendar years after the date the abandoned accounts list is published in the official state newspaper. Thus, for the participant whose name was published on January 20, 1989, the application deadline became January 20, 1999. This moved the deadline up by 11 months. However, incorrect information stating the application deadline for this participant was December 30, 1999, instead of the correct date of January 20, 1999, remained on the Department's Web site until some time in November 1999.
- December 30, 1999. The Department received the participant's application for the benefit. Under the old, pre-November 1999 interpretation, this was a valid application. However, under the new interpretation, it was ruled invalid as it was received after the deadline.
- January 21, 2000. The Department notified the participant that the application was rejected as invalid because it was received after the January 20, 1999, 10-year deadline. Under § 40.08 (8) (d), Wis. Stats., the participant had irretrievably forfeited the account after ten years.
- April 18, 2000. The participant appealed the Department's January 21, 2000 determination.

DECISION

On April 13, 2003, the Department Secretary exercised his equity authority and the participant's retirement benefit application was deemed timely, resulting in the Department paying a lump sum benefit of approximately \$1,867 to the participant.

SUMMARY OF WHY DECISION WAS MADE

The Secretary determined that the participant would have applied within the appropriate timeframe in order to apply for a retirement benefit annuity if the Department had not posted incorrect information regarding the participant's abandoned accounts benefit application deadline on the Department's Web site. The participant relied on the Web site information as accurate, and the Department's failure to correct the abandoned accounts benefit application deadline posted on the ETF Web site contributed to the participant's belief that there were 11 months remaining to apply for the retirement benefit before the WRS benefit would be considered abandoned and irretrievably forfeited.

COMMENTS

- The lump sum retirement benefit of approximately \$1,867 will be paid to the participant from the Trust Fund. The participant has no further WRS benefit entitlement.

- The Department has corrected the information regarding abandoned “write-off” accounts on the Web site to reflect correct application deadlines for all abandoned WRS accounts.